

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SINGULARDTV, GMBH,

Plaintiff,

v.

ZACHARY LEBEAU and KIMBERLY
JACKSON,

Defendant.

USDC SDNY
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Case No. 1:21-cv-10130(VEC)

STIPULATION AND AGREED ORDER

Plaintiff SingularDTV GmbH (“SingularDTV”) and Defendants Zachary LeBeau and Kimberly Jackson (together, “Defendants,” and collectively with SingularDTV, the “Parties”), hereby enter into this stipulation and agreed order (the “Stipulation and Agreed Order”) as follows:

WHEREAS on January 25, 2022, the Court entered a Consent Order requiring, in part, that Defendants Zachary LeBeau and Kimberly Jackson “deliver physical possession of the device storing the Cold Wallet, together with all charging devices and authorizations including log-in information and passwords, to an escrow arrangement as separately agreed upon by the Parties,” Consent Order [Dkt. 66 at 2];

WHEREAS on February 25, 2022, SingularDTV moved for expedited discovery (“Discovery Motion”) as to the fate of the device or devices storing the Cold Wallet after Defendants failed to deliver any such device [Dkt. 76], and this motion was contested by Defendants [Dkt. 85];

WHEREAS on April 6, 2022, the Court granted SingularDTV's motion for expedited discovery, requiring Defendants to produce a variety of nonprivileged documents that were responsive to SingularDTV's requests [Dkt. 88];

WHEREAS on April 26, 2022, SingularDTV sought a Court order compelling Defendants to comply with the April 6, 2022 order and also sought reasonable fees and costs incurred in preparing the letter motion [Dkt. 92 at 1– 2], which motion was contested by Defendants [Dkts. 94, 95];

WHEREAS on May 2, 2022, the Court ordered Defendants to produce all nonprivileged documents responsive to SingularDTV's existing discovery requests not later than May 5, 2022, along with a written declaration describing Defendants' process for finding responsive documents [Dkt. 96 at 1–2];

WHEREAS in its May 2, 2022 order, the Court also ordered Zachary LeBeau to appear for an expedited deposition;

WHEREAS in its May 2, 2022 order, the Court denied SingularDTV's request for fees and costs without prejudice to Plaintiff re-raising the request if document production and Zachary LeBeau's testimony revealed willful noncompliance with the Court's prior order;

WHEREAS on June 1, 2022, SingularDTV requested an order requiring Zachary LeBeau to produce additional documents and renewed its request for fees incurred in preparing various filings due to both Defendants' failure to comply with prior orders [Dkt. 104];

WHEREAS Defendant LeBeau filed letters in opposition to SingularDTV's request [Dkts. 107, 114];

WHEREAS in its July 13, 2022 order [Dkt. 117], the Court found that Zachary LeBeau violated the Court's January 25, 2022 Consent Order;

WHEREAS in the same order, the Court also found that both Zachary LeBeau and Kimberly Jackson violated the Court's April 6, 2022 order;

WHEREAS in the same order, the Court also found that Zachary LeBeau violated the Court's May 2, 2022 order;

WHEREAS in the same order, the Court ordered Zachary LeBeau to comply with the Court's previous orders;

WHEREAS in the same order, the Court granted SingularDTV's motion for reasonable attorney's fees, and ordered Defendants to jointly pay reasonable attorney's fees and costs incurred by SingularDTV in connection with the preparation of SingularDTV's April 26, 2022 letter motion, and further ordered Zachary LeBeau to pay the costs and fees incurred by SingularDTV in taking other steps necessary to obtain his compliance with the Court's orders, including the preparation of SingularDTV's June 1, 2022 letter motion, its June 23, 2022 letter motion, and its deposition of Defendant LeBeau [Dkt. 117];

WHEREAS in the same order, the Court ordered the Parties to meet and confer on the amount of fees that are reasonable;

WHEREAS following the Court's July 13, 2022 order, SingularDTV's counsel and counsel for Zachary LeBeau and Kimberly Jackson met and conferred regarding the amount of reasonable attorney's fees and costs and submitted several joint letters to the Court requesting additional time to meet and confer [Dkts. 118, 119, 120, 121, ...];

WHEREAS, Plaintiff's counsel presented billings in the sum of US \$159,886.75 which Defendants disputed as reasonable;

WHEREAS the Parties, having discussed the amount of reasonable attorney's fees and costs, have agreed to resolve the same as provided herein.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Stipulation and Agreed Order, the Parties hereby stipulate and agree as follows:

1. The Parties agree that Zachary LeBeau and Kimberly Jackson shall pay to SingularDTV, in accordance with the terms herein, the amount of US \$79,943.38 (the “Agreed Sum”) in full and final satisfaction of their obligation to pay reasonable attorney’s fees under the Court’s July 13, 2022 order.

2. All payments hereunder shall be made by wire transfer to an account to be determined by the duly-authorized signatory of SingularDTV, with such account details to be provided to Defendants’ counsel by SingularDTV’s undersigned counsel contemporaneously with the execution of this Stipulation and Agreed Order.

3. SingularDTV agrees that payment of the Agreed Sum by each, either, or both Defendants, shall be made in full satisfaction of their obligations under the Court’s July 13, 2022 order, and unless Defendants default under this Stipulation and Agreed Order, it is immaterial to SingularDTV which of the Defendants effectuates payment of the Agreed Sum.

4. Payment of the Agreed Sum shall be made in two (2) installment payments, without interest, as follows.

5. The first installment payment, in an amount not less than US \$39,971.69 (representing half of the Agreed Sum), shall be made no later than seven (7) calendar days after the execution of this Stipulation and Agreed Order.

6. If the first installment payment is not wired by 6:00 p.m. prevailing Eastern Time on the 7th calendar day following the execution of this Stipulation and Agreed Order, Zachary LeBeau and Kimberly Jackson shall be deemed to be in default of this Stipulation and Agreed Order and shall have three (3) days to cure such default.

7. The second installment payment, in the amount of the balance of the Agreed Sum (i.e., the Agreed Sum less the amount of the first installment payment), shall be wired no later than the 30th calendar day following the date of the first installment payment.

8. If the first installment payment is made in accordance with the terms of this Stipulation and Agreed Order, but the second installment payment is not wired by 6:00 p.m. prevailing Eastern Time on the 30th calendar day following the date of the first installment payment, Zachary LeBeau and Kimberly Jackson shall be deemed to be in default of this Stipulation and Agreed Order and shall have three (3) days to cure such default.

9. In the event of default, the Agreed Sum shall be increased to the amount of US \$159,886.75 (the “Default Sum”), which shall become due and payable immediately upon the event of default, and for which Zachary LeBeau and Kimberly Jackson agree to be jointly and severally liable. Payment of the Default Sum shall constitute full and final satisfaction of their obligations under the Court’s July 13, 2022 order.

10. In the event of default and failure by Zachary LeBeau and Kimberly Jackson to pay the Default Sum, SingularDTV may apply to the Court for entry of judgment against Zachary LeBeau and Kimberly Jackson in the amount of the Default Sum, less any payments already made to SingularDTV under this Stipulation.

11. The Parties agree that each of them, through their respective counsel, has had a full opportunity to participate in the drafting of this Stipulation and Agreed Order and, accordingly, any claimed ambiguity shall be construed neither for nor against either of the Parties.

12. The undersigned hereby represent and warrant that they have full authority to execute this Stipulation and Agreed Order on behalf of the respective Parties and that the respective Parties have full knowledge of, and have consented to, this Stipulation and Agreed Order.

13. This Stipulation and Agreed Order shall be effective immediately upon execution by the Parties and the Parties further expressly agree that the absence of Court approval by the 7th day following the execution of this Stipulation and Agreed Order shall not excuse Defendants from making the first installment payment in accordance with the terms herein.

IT IS SO ORDERED.

Signed: August 2, 2022



**HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE**

IN WITNESS WHEREOF, the Parties executed this Stipulation and Agreed Order as of the date written below.

Dated: August 1, 2022
New York, NY

/s/ Josef M. Klazen

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Counsel to Plaintiff Singular DTV GmbH

Dated: August 1, 2022
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Counsel for Defendant Zachary LeBeau

Dated: August 1, 2022
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